

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1678 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

- =====
1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

ALKABEN K PUJARA

Versus

MAHMAD ABDULALI AFTARALI

Appearance:

MR MEHUL S SHAH for Petitioner

None present for Respondent No. 1

MR MJ TRIVEDI for Respondent No. 2, 3 and 4

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 07/02/2000

ORAL JUDGEMENT

Heard the learned counsel for the parties.

2. The learned trial court under the impugned order
rejected the application of the plaintiff- petitioner

filed for amendment of the plaint and impleadment of respondents NO. 2, 3 and 4 as defendants in the suit. The suit has been filed by the plaintiff- petitioner against the defendant - respondent No.1 (now his name is deleted) for recovery of an amount of Rs.35,360/-. Along with the suit, the plaintiff- petitioner filed an application for attachment before judgment or for getting interim injunction under Order 39 Rule 1 and 2, under sections 94 and section 151 of C.P.C.. On this application, the court passed the order on 20th March, 1997, which reads as under:

The defendant's shop bearing City Survey No.

1177 situated at Dhangadhra in Nani Bazar, titles of which are at present in existence should be kept in status quo till the other order. On payment of process fee, status quo order is passed as above and why it should not be made absolute till the final disposal of the suit, and that why the same should not be attached before judgment, a show cause notice is ordered to be issued to the defendant returnable on dt. 5/4/97.

3. When this order was in existence, the disputed shop has been sold by the defendant- respondent No.1 to defendants- respondents NO. 2, 3 and 4. This fact has not been disputed by the learned counsel for the respondents. The plaintiff- petitioner after knowing all these facts filed an application for amendment of the plaint and impleadment of these three persons as defendants in the suit.

4. Learned trial court has not properly appreciated the facts. In this case, status-quo has been ordered in respect of the disputed shop and during the pendency of that order, the same has been sold. It is true that in the suit as originally framed, prayer has not been made against these respondents but they came into picture only after filing of the suit. Once the court has protected the plaintiff- petitioner by passing the order for maintaining the status quo in respect of the disputed shop, in case thereafter the shop is sold then the purchasers thereof are proper party to the suit and they have to be impleaded as party. This prayer for amendment in the plaint should have been allowed. If court fee is not paid for quashing and setting aside the sale deed, it should have been asked for from the plaintiff but the application could not have been rejected in the way in which what it has been done in the present case.

5. The plaintiff- petitioner had apprehension of disposing of the disputed shop by the defendant NO.1 to make the decree in the suit ineffective and that is the reason she prayed for attachment before judgment. This apprehension of the plaintiff proved correct and the defendant NO.1 taking law in hands, disposed of this property. In the facts of this case, the order of the learned trial court is perverse and it cannot be allowed to stand. In case the order of the learned trial court is allowed to stand, then even on success in the suit, for recovery of decretal amount, plaintiff has to file fresh suit against the defendants - respondents.

6. One of the object and purpose of Order 6 Rule 17 and Order 1 Rule 10, C.P.C. is to avoid multiplicity of proceedings.

7. In the result, this revision application succeeds and the same is allowed. The order of the learned trial court dated 30-10-1998 is quashed and set aside. The amendment as proposed in the plaint and the prayer made for impleadment of these respondents in the suit as defendants therein is allowed. However, it is open to the learned trial court, if it considers necessary, to direct the plaintiff- petitioner to pay appropriate court fees. Rule is made absolute accordingly with no order as to costs.

zgs/-